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No. 93-1645

Supreme Court, U.S.
FILED
MAY 25 1994
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

ADVANCED MICRO DEVICES, INC.,

Petitioner,

v.

INTEL CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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REPLY BRIEF IN SUPPORT OF PETITION

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REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Petitioner Advanced Micro Devices, Inc. ("AMD") hereby replies briefly to the opposition ("Intel Opp.") filed by respondent Intel Corporation ("Intel").

Mootness. Intel asserts that a decision by the Supreme Court of California may moot the issues here "before this Court could grant plenary consideration." (Intel Opp. 8, 29.) But that possibility hardly supports this Court's denial of the petition. Should the Supreme Court of California render its decision after a grant of certiorari but before a merits decision by this Court, the case could simply be removed from this Court's docket.[1]

Collateral Estoppel. Intel asserts that, before reinstating the stay, this Court would be required to determine record-bound questions concerning collateral estoppel that were not decided by the Ninth Circuit. (*See* Intel Opp. 8-9, 27-28.) This, however, is a false issue. First, Intel's assertion has no relevance whatever to the jurisdictional question. Second, Intel's assertion wrongly presupposes that Intel's challenges to the underlying arbitration award should be addressed

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[1] The more pertinent risk is that, in contravention of sound judicial administration, the Federal Arbitration Act, and fundamental principles of comity, the federal District Court may complete the inappropriate duplicative arbitration review ordered by the Ninth Circuit before the Supreme Court of California acts. To eliminate that possibility, this Court should consider reinstating the District Court's stay by summarily reversing the Ninth Circuit under Rule 16.1 or by granting AMD's earlier application to stay the mandate of the Ninth Circuit. (*See* AMD's Application to Recall and Stay Mandate Pending Petition for Certiorari, No. A-371, October 1993 Term (filed March 7, 1994).)

and resolved by the federal courts, rather than by the California courts where Intel first raised them. But Intel already has challenged the arbitration award in California's courts, raising (among other things) the supposed defects in the award which Intel asserts this Court should consider before reversing. (*See* Intel Opp. 28 n.28; AMD App. 25a, 38a; *see also* the parties' briefs before the Supreme Court of California (which have been lodged with the Clerk of this Court).) If the Supreme Court of California rejects those arguments and upholds the arbitration award as rendered, *that judicial determination of arbitral validity* plainly will be entitled to collateral-estoppel effect. Neither this Court nor the inferior federal courts should duplicatively consider at any stage Intel's attacks on the validity of the underlying arbitration award in the manner envisioned by footnote 28 of Intel's opposition.

Jurisdiction. Intel is correct (Intel Opp. i, 5, 9, 10) that AMD initially conceded jurisdiction before the Ninth Circuit, and counsel for AMD regret their oversight in failing to so indicate in AMD's Statement of the Case.[2] As Intel tacitly concedes, however, jurisdictional defects must be considered no matter when raised. Intel's unsuccessful efforts to distinguish the conflicting jurisdictional decisions of the Seventh,

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[2] AMD did not contest jurisdiction in its Brief of Appellee (dated Jan. 19, 1993). However, before the December 28, 1993 decision below, AMD cited *Boushel v. Toro Co.*, 985 F.2d 406 (8th Cir. 1993), to the Ninth Circuit as an additional authority. (*See* AMD Letter to Ninth Circuit Clerk (dated Oct. 12, 1993).) AMD also fully briefed the jurisdictional point in its Petition for Rehearing and Suggestion for Rehearing en Banc at 2-8 (dated Jan. 11, 1994).

Eighth, and Tenth Circuits serve only to underscore the need for this Court's guidance on this frequently recurring question.

Validity of Stay. Intel asserts that it "has never asked the federal courts to modify or set aside [the arbitration] award." (Intel Opp. 25.) This is simply untrue. Advancing the very same arguments also made to the California courts in the arbitration-review proceedings, Intel specifically urged the trial court and the Ninth Circuit to declare the arbitration award "illegal[]":

> The issue was fully briefed and argued, but the district court declined to deny the stay based upon it. The illegality question depends entirely upon whether the arbitrator held that AMD was not entitled to rights to Intel's 80386 under the 1982 Contract . . ., and whether Intel authorized the arbitrator to award only remedies that he deemed to be within the scope of the contract before him . . . . That issue is properly presented here. . . . Because the illegality of the arbitrator's decision is again fully briefed and ripe for decision, and because it should have required denial of the stay in the court below, Intel asks this Court to reach that question in deciding the appeal so that the remainder of the case may be resolved without unnecessary delay.

(AMD App. 64a-65a.) Moreover, the Ninth Circuit has expressly directed the District Court to conduct an arbitration review under the Federal Arbitration Act ("FAA"), thereby duplicating the arbitration review already conducted in the California courts. (*See* AMD App. 10a-12a.) Nowhere does Intel reconcile this di-

rective to the District Court with principles of sound judicial administration, with the FAA, or with fundamental principles of comity. In view of the ever-increasing importance of arbitration as an alternative to litigation, inferior federal courts urgently need this Court's guidance on the procedures to be followed when federal litigation implicates the validity of an arbitration award already under review in state court proceedings.

Conclusion

For the reasons stated here and in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted,

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Dated: May 25, 1994